

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of C.A.W., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LARRY HEIER,

Appellant,

and

DEBORAH ANN WEBER and ROBERT
RIVARD,

Respondents.

FOR PUBLICATION

October 23, 2003

9:05 a.m.

No. 235731

Macomb Circuit Court

Family Division

LC No. 92-036958-NA

ON REMAND

Updated Copy

December 30, 2003

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

FITZGERALD, P.J.

This case is before us on remand from the Supreme Court.¹ In our earlier opinion,² a divided panel³ of this Court held that Larry Heier, a putative father, had standing to intervene in a child protective proceeding under the juvenile code.⁴ The majority held that the termination of Robert Rivard's parental rights at the conclusion of the child protective proceeding was effectively a finding "by judicial notice or otherwise"⁵ that CAW was not the issue of the

¹ *In re CAW*, 469 Mich 192; 665 NW2d 475 (2003).

² *In re CAW*, 253 Mich App 629; 659 NW2d 657 (2002).

³ Fitzgerald, P.J., dissented.

⁴ MCL 712A.1 *et seq.*

⁵ 253 Mich App 637, quoting former MCR 5.903(A)(1).

marriage of Deborah A. Weber and Rivard and that Rivard no longer had any legal rights as father. Thus, the majority concluded that the door was opened for the putative father to have standing to establish his paternity.

The Supreme Court disagreed and reversed the decision of this Court, concluding that the "termination of Rivard's parental rights was not a determination that CAW was not the issue of the marriage and, thus, that Rivard was no longer his father; rather, it was only a determination that Rivard's legal rights were terminated. Thus, the requirements of the court rule^[6] to give Heier, a putative father, standing were not met."⁷ The Supreme Court remanded this case to this Court with instructions to address Heier's argument that the juvenile code, by precluding standing to intervene in a child protective proceeding, deprives him of a fundamental right without the benefit of procedural or substantive due process. We disagree.

In *Girard v Wagenmaker*,⁸ the Court held that a putative father lacks standing to challenge the parentage of a child born while the mother was legally married to another man if a prior determination on paternity regarding the mother's husband has not been made. In *Hauser v Reilly*,⁹ this Court noted that, notwithstanding the holding in *Girard*, the state constitution still affords a putative father a due process interest in proceedings related to paternity.¹⁰ Although the Court rejected the argument that a biological link alone established a due process liberty interest for a putative father, the Court adopted the test advocated by Justice Brennan in *Michael H v Gerald D*:¹¹

We agree with the reasoning of Justice Brennan in *Michael H*. Following that analysis, if plaintiff in this case had an established relationship with his child, we would hold that he had a protected liberty interest in that relationship that entitled him to due process of law. However, because plaintiff has no such relationship, we hold that the Paternity Act did not deny him his right to due process. [*Hauser, supra* at 188.]

In *McHone v Sosnowski*,¹² this Court refused to apply *Hauser* even though there was evidence that the plaintiff had established some degree of a relationship with the child. The Court concluded that *Hauser's* discussion of a putative father's liberty interest was dictum, and it was best to leave such a determination for the Supreme Court of Michigan, because "[t]he barrier provided by the Supreme Court in *Girard, supra*, cannot be hurdled in this Court."¹³ Thus,

⁶ Former MCR 5.903(A)(4).

⁷ 469 Mich 199.

⁸ *Girard v Wagenmaker*, 437 Mich 231; 470 NW2d 372 (1991).

⁹ *Hauser v Reilly*, 212 Mich App 184; 536 NW2d 865 (1995).

¹⁰ *Id.* at 186-188.

¹¹ *Michael H v Gerald D*, 491 US 110; 109 S Ct 2333; 105 L Ed 2d 91 (1989).

¹² *McHone v Sosnowski*, 239 Mich App 674; 609 NW2d 844 (2000).

¹³ *Id.* at 679-680.

McHone precludes a finding that Heier has a protected liberty interest in his relationship with CAW.¹⁴

Even if *Hauser* were followed and the test discussed by Justice Brennan applied, Heier cannot show that he was denied his right to due process. Justice Brennan defined a substantial parent-child relationship as, "[w]hen an unwed father demonstrates a full commitment to the responsibilities of parenthood by com[ing] forward to participate in the rearing of his child"¹⁵ There is no record support that Heier had a relationship with CAW that could be defined as substantial or to the point that Heier was actively fulfilling his role as a parent. There are indications that Heier visited and played with CAW on a regular basis when CAW lived with Weber and that he provided some support. However, although Heier claimed to be aware that CAW was in foster care and had been removed from Weber's custody, he did nothing more than possibly visit with CAW at the foster parent's home a few times. He did not even immediately come forward when Weber's parental rights were terminated. The record does not support a finding that there was a substantial parent-child relationship in this case.¹⁶

Affirmed.

Bandstra, J., concurred.

/s/ E. Thomas Fitzgerald

/s/ Richard A. Bandstra

¹⁴ *Girard*, *Hauser*, and *McHone* each involve proceedings under the Paternity Act. Nonetheless, each case involves a situation concerning a putative father's liberty interest in the parenting of his child, and the analysis would apply equally in a child protective proceeding under the juvenile code.

¹⁵ *Michael H*, *supra*, at 143, quoting *Lehr v Robertson*, 463 US 248, 261; 103 S Ct 2985; 77 L Ed 2d 614 (1983), quoting *Caban v Mohammed*, 441 US 380, 392; 99 S Ct 1760; 60 L Ed 2d 297 (1979).

¹⁶ Because Heier lacked standing to intervene, we need not address his argument that he was not provided with proper notice of the proceedings.